

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC 2002-000595

10/08/2003

DUI investigation against the Appellant. This Court concludes that the trial judge did not err as a matter of law, and that sufficient and substantial evidence exists to support the trial judge's factual findings denying Appellant's Motion to Suppress.

Generally, a trial judge's ruling on the admissibility of evidence will not be reversed without a showing that the trial judge abused his or her discretion.¹ A reviewing court must not reweigh the evidence presented to determine if it would reach the same conclusion as the original trier of fact.² All evidence must be viewed in a light most favorable to upholding the trial judge's ruling, resolving reasonable inferences against the Appellant.³ Mixed questions of law and fact are reviewed *de novo* by an appellate court.⁴ In this case, the trial judge found that there was only one blood draw from the Appellant. The Court also found that though hospital policy was not strictly followed in regards to the completion of all forms that are required to be kept within the hospital file, that the blood draw was still proper for legal purposes under Arizona law. Specifically, the trial judge found:

I reviewed the documentary evidence that has been submitted as well as my notes on the testimony of the witnesses in this case and the case law and memorandum that have been submitted by counsel in regard to their positions.

It is the decision of the court that there is clearly a discrepancy of fact between the time that the blood draw was taken as testified to by Officer Gonzalez and the time indicated in the hospital nursing record flow chart. However, the information in the nursing record flow chart conforms to the testimony of the officer, that is Officer Gonzalez in this case, and it appears that there was one draw taken for medical purposes and that the Officer's vials were filled from that one blood draw. I do not find any evidence that there was a second draw. There is no indication of any activity on the nursing flow chart between 22:50 and the 23:20 time when the blood draw was done. The Officer testified that he believed the blood was drawn at approximately 23:00 hours. There is no documentation of that in the nursing flow chart sheet. The absence of a signed - - I also find that there is a lack of a signed law

¹ State v. Sharp, 193 Ariz. 414, 973 P.2d 1171 (1999).

² State v. Guerra, 161 Ariz. 289, 778 P.2d 1185 (1989); State v. Mincey, 141 Ariz. 425, 687 P.2d 1180, cert.denied, 469 U.S. 1040, 105 S.Ct. 521, 83 L.Ed.2d 409 (1984); State v. Brown, 125 Ariz. 160, 608 P.2d 299 (1980).

³ State v. Guerra, *supra*.

⁴ State v. Winegar, 147 Ariz. 440, 711 P.2d 579 (1985).

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enforcement consent form in the hospital records. That may indicate that there is a violation of hospital policy, however, that does not invalidate the blood draw for legal purposes under Arizona law.

Therefore, I'm going to deny the Motion to Suppress at this time.⁵

The warrantless taking of blood from a person suspected of DUI is admissible in Arizona pursuant to A.R.S. Section 28-1388(E):

Notwithstanding any other law, if a law enforcement officer has probable cause to believe that a person has violated Section 28-1381 and a sample of blood, urine or other bodily substance is taken from that person for any reason, a portion of that sample sufficient for analysis shall be provided to a law enforcement officer if requested for law enforcement purposes. A person who fails to comply with this subsection is guilty of a class 1 misdemeanor.

Our Arizona Supreme Court has interpreted this statute to permit the warrantless taking of blood from a person suspected of DUI if the following conditions are met:

- 1) Probable cause exists to believe the person has committed a DUI offense;
- 2) Exigent circumstances are present; and,
- 3) The blood is drawn for medical purposes by medical personnel.⁶

This Court finds, as a matter of law, that the three requirements enumerated in State v. Cocio⁷ have been established by the State in this case. First, there is no question but that probable cause existed to suspect that Appellant had violated a DUI statute. That issue is not contested. Secondly, exigent circumstances exist because of the potential for loss of the evidence of alcohol within Appellant's blood. As explained by the Arizona Supreme Court in Cocio:

...because of the destructibility of the evidence, exigent circumstances existed (in this case). The highly evanescent

⁵ R.T. of October 14, 2002, at pages 48-49.

⁶ State v. Cocio, 147 Ariz. 277, 284, 709 P.2d 1336, 1345 (1985), citing Schmerber v. California, 384 U.S. 757, 86 S.Ct. 1826, 16 L.Ed.2d 908 (1996) and Cupp v. Murphy, 412 U.S. 291, 93 S.Ct. 2000, 36 L.Ed.2d 900 (1973).

⁷ Id.

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nature of alcohol in the defendant's blood stream guaranteed that the alcohol would dissipate over a relatively short period of time (citation omitted). In fact, the exigent circumstances in this case are even more compelling than Cupp since alcohol in a suspects blood is certain to disappear while the physical evidence on defendant in Cupp was only very likely to disappear while a search warrant was obtained.⁸

Finally, the blood was drawn for medical purposes by medical personnel insuring that that the intrusion by the police into the Appellant's body was minimal. The trial judge found only one blood draw was performed.

For all of the reasons cited above, this Court concludes that the trial judge did not err as a matter of law in denying Appellant's Motion to Suppress the results of the blood draw. Further, this Court finds that the trial judge's factual conclusions were supported by the record in this case.

IT IS ORDERED sustaining the findings of guilt and sentences imposed by the Phoenix City Court in this case.

IT IS FURTHER ORDERED remanding this matter back to the Phoenix City Court for all further and future proceedings in this case.

/ s / HONORABLE MICHAEL D. JONES

JUDICIAL OFFICER OF THE SUPERIOR COURT

⁸ Id., 147 Ariz. at 284, 709 P.2d at 1345.
Docket Code 512